

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

COUNTY OF BUTLER, et al.,	:	Civil Action No. 2:20-cv-677
Plaintiffs	:	
	:	Hon. William S. Stickman IV
vs.	:	
	:	
THOMAS W. WOLF, et al.,	:	
Defendants	:	

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA	:	
	:	ss.
COUNTY OF BUTLER	:	

My name is Leslie Osche. I reside in Butler County, Pennsylvania. I serve the County of Butler as Chairperson of the Butler County Board of Commissioners. I have been a member of the Butler County Board of Commissioners for two terms, beginning with my election in 2015 and subsequent reelection in 2019. Prior to my time serving as County Commissioner, I was employed as a personnel director for United Way of Butler County. During my second term as a County Commissioner and during my tenure as Chairperson for the Butler County Board of Commissioners, Governor Thomas W. Wolf entered Orders in response to the COVID-19 pandemic. These orders mandated that all non-essential businesses in the Commonwealth of Pennsylvania cease all operations as well as mandating that all individuals stay in their homes. In response to the COVID-19 pandemic, Butler County issued its own declaration which stated that the Butler County would work with state and federal authorities to restore essential public services. The declaration was passed to ensure the local hospital was not overwhelmed by cases of COVID-19. This declaration did not violate Butler County residents' rights to operate their

businesses or to travel freely. This declaration was conceived in concert with Butler Health Systems and focused on increased testing, and the providing of personal protective equipment, as well as medical support for the elderly. On March 19, as part of Governor Wolf's Orders in response to the COVID-19 pandemic, the operation of businesses that were not deemed "life sustaining" was prohibited in the entirety of the Commonwealth of Pennsylvania, including Butler County. I know of no other time when a similar viral outbreak led to business closure. In my experience employed by United Way, I assisted in the relief efforts for severe flooding from Hurricane Ivan in 2004. Despite a disaster declaration from the County during this hurricane, no businesses were ever closed or ordered to cease operation.

Governor Wolf created a waiver system to allow certain businesses to remain open. However, a large quantity of waivers filed for businesses in Butler County were either rejected or ignored. Unemployment in our County has increased from 3% to 11.6% currently. The closure of County offices such as the County Agency on Aging, Planning, and Drug and Alcohol Services imperiled many Butler County residents who have come to rely on these agencies. The Property and Revenue office was especially challenged to complete timely assessments on new properties in order to provide school districts with updated valuations for interim tax bills, key to operating revenue for school districts who were mandated to pay staff whether they were working or not. This also meant that the usual revenues drawn from permits, fees, and fines collected by these offices was lost as well. The closure of our offices also required many employees to telecommute. The cost of arranging such a telecommuting program for our employees was in excess of \$100,000.00. The employees with positions unable to transition to telecommuting had to be laid off.

On April 17, 2020, Butler County residents begin public protests in front of the Government Center demanding the County reopen for business. On April 24, 2020 the Governor announced a phased reopening of PA that placed all Counties in three-color designation (Red, Yellow, Green) by region. Butler County was included in the Southwest PA region. That same day I did an interview on Channel 11 indicating we stood ready to work with Rich Fitzgerald, Allegheny County Executive, and the region to plan and coordinate actions necessary to safely reopen Southwest PA. I followed up with an email to him asking him to take lead in convening the Commissioners in the region to work with the Governor and the Department of Health. There was no response.

On April 27, 2020 during a virtual meeting with the SWPA Commission, Mr. Fitzgerald asked the Commission to collect the data on each County in the region based on the measure the state announced, which was 50 new cases per 100,000 population over a rolling 14-day period. SPC staff did that for all the 9 counties in the region and Butler County more than met the measurement to move from the red to the yellow zone. On April 29, 2020 Butler County Commissioners, at our public meeting, voted unanimously to pass a resolution to send a letter to Governor Wolf clearly outlining all the work our community had done in response to the pandemic to protect our residents and to mitigate the spread of the virus, according to the CDC guidelines that have been posted on our website since mid-March. It requested we be designated to move to Yellow status.

On Friday, May 1, 2020, the Butler County Commissioners did a studio interview with Tyler Friel on WISR Radio discussing the letter, our work, our plans, and the frustration with the lack of communication with the Governor's office and the Department of Health. In fact, Commissioner Boozel, Vice Chairman for the County Commissioner's Association, had

requested meetings with the Governor Wolf's office. We all expressed our frustrations with the lack of transparency in the Governor's office. On that same day, we joined the Northwest County Commissioners Association in writing a letter to the Governor, respectfully requesting our Counties be moved to Yellow.

On the afternoon of May 1, 2020, the Governor held a press conference in which we learned our County would NOT move to the yellow phase on May 8, but other counties surrounding Butler County including Clarion, Venango, Mercer and Lawrence Counties would move to yellow.

At the height of the pandemic, Butler County only had 257 purported cases of COVID-19, of which only 230 were confirmed, representing only 0.14% of Butler County's overall population (in excess of 180,000 people). Clarion, Venango, Mercer, Lawrence, and Armstrong Counties are similarly situated to Butler County in terms of population, medical infrastructure, confirmed COVID-19 cases, and COVID-19 Deaths. Yet, these counties were allowed to enter the Yellow designation while Butler County stayed shut down (Red). Clarion County, a neighboring County to Butler, had 0.08% of their overall population infected with COVID-19. Despite a difference of only 0.06%, Clarion County was permitted to enter the "Green" designation while Butler was not. Mercer and Lawrence Counties only had 0.10% of their population infected with COVID-19, yet both counties were permitted to enter the "Green" designation while Butler was not. Armstrong County, a neighboring County to Butler, had 0.11% of their overall population infected with COVID-19. None of these differences are material or significant. Despite a difference of only 0.03%, Armstrong County was permitted to enter the "Green" designation while Butler was not. In placing the Counties of Pennsylvania in their designation for reopening, Governor Wolf did not explain or list any criteria or standard by

which the counties were being sorted. The press has reported widespread disrepute of the statistics relied upon by the Governor and Health Secretary. Specifically, Gov. Wolf failed to provide any justification for keeping Butler County in the “Red” designation despite moving similarly situated counties to Yellow and then from Yellow to Green.

Thus, again on May 1, 2020, we were flooded with calls, emails and protests from small business owners who were about to lose their lifelong investments and livelihoods. While a local furniture and appliance store was forced to stay closed, big box stores like Home Depot, Lowes, Walmart and Target were allowed to remain open as essential businesses. The owner of this local furniture store has been denied months of revenue which affects his employees and the livelihood of the entire supply chain connected to that store.

On the morning of Saturday May 2, 2020, I discovered an email with a “Risk Assessment Tool” dated May 1, 2020 that outlined the index factors used to determine how counties move from one phase to another. We received this information after they already had determined we would remain Red. It was the understanding of the Counties in the Southwestern region that the color designations were to be measured only by 50 new cases per 100,000 people in a 14- day period. However, this tool added four more factors and indicated that we would need to have proper “contact tracing” in place to move to Green. I again reached out to the Governor’s office by email, expressing that simple meetings with our emergency management leadership and Commissioners would help to address communication issues. I received no response to this email other than a telephone message left in the Commissioners’ office. This message went undiscovered for many days as the County offices were shut down and the phones were unmanned as my assistant was furloughed.

As a result of this arbitrary designation procedure, many Butler County citizens traveled to surrounding counties in the Yellow designation or to other states, such as Ohio and West Virginia, causing Butler County to lose significant business and revenue. By not placing Butler County in a higher designation along with its surrounding neighbors, Governor Wolf essentially singled out Butler County for disparate treatment.

On May 28, 2020, Butler County submitted a “COVID-19 Management and Recovery Plan” to the Governor’s Office and the Department of Health that was prepared in collaboration with Butler Health System, Butler County Emergency Management, the Area Agency on Aging, and others as part of our COVID-19 task force. The plan detailed specific testing capacity expansion and a plan for regular testing of local congregate care facilities. It also called for locally directed contact tracing and support for businesses. The goal was not only to protect our most vulnerable citizens, but to ensure that business closures would not be necessary again. They promised to review the plan. As of July 7, 2020, neither the Governor’s Office nor the DOH have responded to the plan.

On June 5, 2020 the County moved to Green status. On Monday, June 29, 2020 in a call with County Commissioners Association (CCAP) Board of Directors, Department of Health, PEMA and the Governor’s Office we heard their concerns of a lack of compliance with Orders to wear face masks. Later that day, the CCAP director asked the Governor’s office to allow Counties one week to urge their residents to comply with wearing a mask in public places. Instead, on July 1, 2020 the Secretary of Health issued an order mandating the wearing of masks when leaving the house. On July 2, 2020 I received a call from Mr. Rob Ghormoz of the Governor’s office indicating they were watching our case numbers, and that they were experiencing a dramatic rise in numbers in Western PA. He said Butler County’s were not as

bad as nine other counties, but they were “watching them”. He said they were not considering turning the County back to Yellow yet. He asked that with the upcoming 4th of July weekend, that we encourage our residents to wear masks via social media or news releases. I asked Mr. Ghormoz if he could provide data on our newly identified cases such as tracing the cases to particular zip-codes or businesses. He indicated he did not have that data but would provide it to me at a later time. We prepared and submitted a joint press release with Butler Health System within an hour of his call urging Butler County residents to wear a face mask and practice social distancing.

On Monday, July 6th in another weekly call with CCAP, PEMA, the Governor’s Office and the Pennsylvania Department of Health, I again asked for specific data. Instead, we were invited to a call on July 7th at 2:15 p.m. during which Secretary Levine told our County Commissioners and Solicitor, Mr. Wil White, that they would be closing indoor dining in our bars and restaurants and limiting gatherings to no more than 25 people. Mr. White asked for the evidence that our increase in identified cases was tied to bars and restaurants, making this our third official request for data justifying the restriction of Butler County businesses. Dr. Levine replied that they did not have that type of “granular information” and that they would have to do a “deeper dive” to obtain this data.

I pointed out to the Secretary that the data on the Department of Health’s “COVID-19 Early Warning Monitoring System” dashboard showed Butler County’s indicators to be under the statewide average and asked how they were handling cases in the eastern part of the Commonwealth. Sec. Levine advised that they aren’t closing restaurants in Eastern Pennsylvania as they’ve very recently entered Green. However, the dashboard updated July 3, 2020, shows multiple Counties in Eastern PA with much higher numbers than Butler County.

For the week ending July 2, 2020, Butler County's incident rate per 100,000 people was 22.9 compared to 10.6 in the prior week, with a 3% positivity rate in testing compared to 1.9% in the prior week. Hospitalizations due to COVID-19 decreased by .04% and Emergency Department visits increased 1.3% compared to 1% in the prior week. However, in Dauphin County, which turned Green over one week ago, the incident rate was 88.4% compared to 65.3% in the previous week; their positivity rate was 9.4% compared to 7.9% in the prior week, average daily hospitalizations increased by 1.9% and Emergency Department visits remained the same at 0.3%. Even if our incident rate increased to 45 per 100,000, these numbers still did not compare to Dauphin or to Allegheny County. I ate at a restaurant/bar in Dauphin County on June 30th that was serving indoors and will remain open despite a higher incident rate than Butler County.

Butler County's number of positive cases, identified daily, remained under 8 until July 2, 2020 at which time we saw 8, then 11 on the 3rd, 10 on the 4th, 6 on the 5th, 10 on the 6th, and 14 on the 7th. I pointed out to Dr. Levine that we had not had enough time for the mask mandate to help slow cases. In response, she dismissed my concerns and simply said, "thank you."

Butler County has not been provided with any testing data, testing patterns, lab backlogs/reporting delays, or mass screening data. Gov. Wolf and Sec. Levine have frankly provided no evidence that there is a need to close bars and restaurants to indoor dining.

Lastly, many citizens in Butler County were denied their legal right to attend and participate in public County meetings, making it exceptionally difficult to adequately address the needs of our citizens during this unprecedented pandemic. The Butler County Commissioners were forced to hold all meetings virtually, preventing many rural or elderly residents of Butler County from accessing the meetings due to lack of internet service, hardware, or the ability to communicate. As part of Gov. Wolf's Shut down orders, Pennsylvania citizens were mandated

to stay in their homes except to make a necessary trip to an essential business. This order restricted the freedom of our citizens to travel within the Commonwealth of Pennsylvania and had a profoundly negative impact on the financial and psychological well-being of many Butler County residents.

In Butler County, our residents have been threatened with arrest by the Governor and Secretary of Health for leaving their homes, traveling freely, or trying to salvage their businesses. They have also been refused the right to worship because of the congregate restrictions, while public protests in Butler County and elsewhere in violation of the very same Orders, have been supported by and encouraged by the Governor and Secretary of Health (see Exhibit attached entitled “Gov. Wolf on Pa. protests about Floyd death: ‘We all must look out for each other’”).

Our County has been the victim of disparate treatment at the hands of the Defendants in violation of our right of equal protection. Our residents and businesses have suffered the same deprivations. We are also aware that the Governor has renewed his Executive Order and has the right to continue to renew it every ninety (90) days without limitation.

Ordering our residents to refrain from travel and refrain from religious services due to congregate numbers, while encourage, and indeed mandating the County to permit protests (in violation of the aggregate numbers) violates our citizens' constitutional rights of assembly, worship, travel, and equal protection.

Our only recourse is to seek protection from the Federal Courts on behalf of our County and our citizens.

No one should lose their precious constitutional rights as a result of the outbreak of this disease. We seek a declaration that these Orders violate the United States Constitution.

I verify that the statements made in the foregoing document
are true and correct to the best of my knowledge, information, and
belief. I declare, certify, verify, or state under penalty of perjury
that the foregoing is true and correct, under 28 U.S.C. Section
1746, relating to unsworn declarations under penalty of perjury.



Leslie Osche